***THE HON'BLE MR. JUSTICE BILAL NAZKI**

+Writ Petition No.14242 of 1991

%Dated 20-01-2005

#Between:

1.Mehernosh H. Chenoy, S/o. late Hoshang S.Chenoy,

r/o. 8-2-269/4, Road No.2, Banjara Hills, Hyderabad-34

2.Nauzar Chenoy, S/o. Naoshir S.Chenoy,

R/o. 43, Mc-In-tyre Road, Prenderghast,

Secunderabad. **..... PETITIONERS**

AND

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1.State of Andhra Pradesh, rep. by the

Principal Secretary to Government

(Revenue) Secretariat, Hyderabad.

2.The Special Dy. Collector, Land Acquisition,

(General) Hyderabad,

3. Union of India, rep. by the Secretary

Ministry of Civil Aviation New Delhi.

4. Airport Authority of India, rep. by Director General,

Civil Aviation, Begumpet, Airport, Hyderabad.

5.The Chief Secretary, Govt. of A.P., Hyderabad.

(R5 is impleaded as per Court order in

W.P.No.14242 of 1991 dated 7-11-2002) **.....RESPONDENTS**

! **Counsel for the Petitioner: MR.VILAS V.AFZULPURKAR**

^Counsel for the Respondents 1, 2 & 5: G.P. for Land Acquisition.

^Counsel for the Respondents 3 & 4: MR.A.RAJASHEKAR REDDY (SC FOR CG)

<GIST

>HEAD NOTE

?Cases referred

1. AIR 1981 SC 1681

2. (1992) 2 SCC 598

3. AIR 1974 SC 259 (V 61 C 47)

4. AIR 1970 SC 898

5. AIR 1995 SC 1991

6. AIR 1967 SC 1450 (V 54 C 306)

7. AIR 1967 SC 1450

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

**THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE**

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PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

WRIT PETITION NO : 14242 of 1991

-

Between:

1.Mehernosh H. Chenoy,

S/o. late Hoshang S.Chenoy,

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Govt. of A.P., Hyderabad.

(R5 is impleaded as per Court order in

W.P.No.14242 of 1991 dated 7-11-2002) **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein, the High Court may be pleased to issue a writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction directing the respondents to initiate Land Acquisition Proceedings afresh by publication of requisite Notifications and Declarations and conducting the enquiry and making an Award as per the provisions contained in the Land Acquisition Act, 1894 for the land comprised in Sy.No.171 Mazi Sy.No.37 Thokatta village.

Counsel for the Petitioner: MR.VILAS V.AFZULPURKAR

Counsel for the Respondents 1, 2 & 5: G.P. for Land Acquisition.

Counsel for the Respondents 3 & 4: MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

ORDER:

This writ petition has been filed in the year 1991. Petitioners seek a writ directing the respondents to initiate Land Acquisition Proceedings afresh by publication of requisite Notifications and Declarations, so that an award is made in terms of the provisions of the Land Acquisition Act, 1894 (for short 'the Act') with respect to the land in Survey No.171 Mazi Survey No.37 in Thokatta village. This relief is claimed on the following assertions:

That the petitioners are cousins and their mothers, who were sisters in between themselves, were daughters of one late Rustomji Jamshedji Chenoy. Petitioners contend that Begumpet Aerodrome was constructed by erstwhile Government of Nizam. The expansion of the Aerodrome was carried in or about November, 1947, and for that purpose land was acquired in phases. In November, 1947, a notification was published under the Hyderabad Land Acquisition Act. In the said publication, survey numbers of the land, sought to be acquired, were published, but the boundaries of the land proposed to be acquired were not described. Draft notification was published in the Gazette No. 39 dated 7th Sherawar 1356 Fasli and Draft Declaration was published in Gazette No.6 dated 10th Dhaix 1356 Fasli. The land bearing Survey No.171 of Thokatta village belonging to the petitioners' grand father Rustomji Jamshedji Chenoy was also sought to be acquired for extension of the Aerodrome. Survey Number 171 is part of the old Survey No.37 referred to in revenue records as Mazi Survey No.37 and the then Jagir authorities had granted the patta of an extent of Ac.3-18 guntas to Rustomji Jamshedji Chenoy. The Aerodrome authorities took over possession of the land from the erstwhile Revenue authorities in or about 1948. In April, 1956, a joint claim petition was filed by the father of petitioner No.1, father of petitioner No.2 and Rustomji Jamshedji Chenoy, claiming compensation for the land acquired. The Special Deputy Collector, Land Acquisition General, Hyderabad, sought information from the Airport authorities about the factum of having taken possession of the land. In 1968, the Begumpet Airport authorities confirmed that land in S.No.171, belonging to Rustomji Jamshedji Chenoy, was taken over by Director General, Civil Aviation. The Special Deputy Collector, Land Acquisition General was thereupon requested for finalizing the payment of compensation as he was seized of the matter. Thereafter the claim of the petitioners to the title of the land in S.No.171 was referred to the Board of Revenue, who after careful consideration of the entire matter gave directions in B.P.Rt.No.3374/76 dated 24-9-1976 directing the Special Deputy Collector to settle

the claim and to pass the award. Instead of passing the award, the Special Deputy Collector, Hyderabad, once again referred the matter to the State Government seeking clarification with regard to applicability of the Urban Land Ceilings Act to the cases pertaining to the lands acquired. According to the petitioners, on Government instructions all the acquisition proceedings were kept in abeyance. But according to the information of the petitioners, the Government was reported to have advised that as the land had already been vested in the Government before the enactment of Ceiling Act, it would not make a difference. The petitioners' claim that though there was no impediment for passing of the award and payment of compensation, yet the Land Acquisition Authorities delayed the matter and have not taken any steps for finalisation of the award and payment of the compensation. It is further submitted that the Land Acquisition Proceedings were initiated under Hyderabad Land Acquisition Act. The Land Acquisition Act of 1894 was made applicable to Hyderabad under the Land Acquisition (A.P.Extension and Amendment) Act-XX of 1959 from 15-10-1959. The said Act was amended by Act-68 of 1984. In terms of Section 11 (A) of the Act, an award has to be made within two years from the date of publication of declaration and if no award is made within that period entire proceedings for the Acquisition shall lapse. In case there was a declaration published before the amendment, the award could be made within a period of two years from such amendment. Since the award has not been passed before 24th September, 1986, which was the outer limit under the amendment, the respondents were bound to issue a fresh notification. The petitioners further contended that there was no dispute with regard to the title or ownership in respect of the land in S.No.171. There was no dispute about the applicability of the Land Acquisition Act also. The petitioners have been unjustly deprived of the compensation for the land acquired. The inordinate delay on the part of respondents deprived the petitioners of their land and also the compensation thereof, which is in contravention of the provisions of Article 300-A of the Constitution of India.

The Counter-affidavit was filed by the Land Acquisition Officer, Hyderabad, on behalf of respondents 1, 2 and 5. It was contended in the counter that the Acquisition had taken place in the year 1948 by the erstwhile State of Hyderabad and the petitioners had approached the Court in the year 1991, after a lapse of 43 years and as such the writ petition was liable to be dismissed on the ground of latches. In the

counter-affidavit an explanation has been given as to why the counter had not been filed earlier, as the same was filed on 13-12-2002. It is submitted that on 1-11-2002 a telephonic message was received from the Liaison Officer, High Court, that this writ petition was listed for hearing on 5-11-2002 and that the Government Pleader's Office has no record pertaining to the said case. Thereafter a thorough search was made and the record was traced from the record room on 2-11-2002. The Government Pleader perused the records and made an endorsement on the file requiring further information in the case. On 7-11-2002 when the writ petition was listed before the High Court, as no counter had been filed, the Court directed appearance of respondent No.1 on 2-12-2002 along with connected records to facilitate the Court for disposal of the case. The Court further gave liberty to file an application for leave to file counter-affidavit in view of the delay. It is further contended that with great efforts a copy of Draft Notification and Draft Declaration, which were published in Urdu were secured from the office of the State Archives and thereafter a counter-affidavit was filed. It is contended in the counter-affidavit that the land acquisition proposals were initiated by the erstwhile Hyderabad State to acquire the lands for extension of Begumpet Airport under the provisions of Hyderabad Land Acquisition Act, 1319 Fasli. The then Deputy Collector issued draft notification under Section 5 of the Act on 22-9-1356 Fasli to acquire an extent of 133 acres of land in the vicinity of Begumpet Airport covering the Revenue villages of Thokatta, Patelnagar, Ferozguda, Bholakpur and Begumpet. The said notification was published in Gazette No.39 dated 7th Shehrewar 1356 Fasli at page Nos.1821 to 1825. The particulars of the lands covered by said notification of Thokatta village were given in the counter-affidavit. Except for survey No. 37, all other survey numbers were notified as patta lands but Survey No.37/Paiki was shown as Poramboke Sarkari. Though the notification was issued as early as in the year 1948, the petitioners filed an application for the first time after a lapse of 8 years i.e., on 13-4-1956 claiming that their lands in S.Nos.37/2 and 3 corresponding to new S.No.171 were the subject matter of notification issued to acquire the lands for extension of Begumpet Airport. The notification does not at all show that survey numbers 37/2 and 3 were notified, and as such the claim of the petitioners that their lands have been notified was without any substance. The lands notified in Gazette by the then Collector were situated in S.No.37/Paike and other survey numbers, for which the petitioners have no claim. It is also contended that even if it is considered that S.Nos.37/2 and 37/3 were also notified, even then, the notification shows that it was

Paike land, which is a sarkari poramboke. Since the land belongs to the Government, therefore, the question of payment of compensation would not arise. The lands, which were in fact notified, were duly taken possession by the authorities, and an award has been passed except for survey No.37, since the said land belonged to the Government. There was no record available in the office in respect of Government land utilized for the purpose of extension of Begumpet Aerodrome. All the files relating to Land Acquisition for Begumpet Aerodrome have been closed and made over to the record room during the erstwhile regime of Hyderabad State. On 13-4-1956, one Sri Mehernosh H. Chenoy and others filed a joint application before the Collector, Land Acquisition, Hyderabad, to the effect that the first petitioner was the owner of an extent of Ac.3-00 covered under S.No.171 and the said land had been taken over in 1948. On 9-3-1957, a notice was issued to the petitioners to file title deeds but the petitioners failed to submit any documents to establish their title over the property. It is further contended that if the petitioners' land had been taken possession of by the authorities, they should have immediately approached and made their claim, but they kept quiet for more than eight years before for the first time they moved an application in the year 1956. It was accepted however that the Board of Revenue had issued direction to the Land Acquisition Officer to settle the claim and pass award after completing the Award enquiry. Those instructions related to land in S.No.171, which corresponds to old S.No.37/2 and 3, which were not notified under Hyderabad Land Acquisition Act, 1319 Fasli. It is contended that the petitioners were trying to take advantage of old S.No.37 and ignoring that there were 25 subdivisions made out of S.No.37. The total extent of S.No.37 was 1361.17 acres and it was classified as Poramboke Sarkari and out of which the land in S.No.37/Paiki was notified under Hyderabad Land Acquisition Act 1319 Fasli. The contention of the petitioners that their land was notified and acquired for the purpose of extension of Begumpet Aerodrome was absolutely incorrect and baseless.

During the hearing of this petition, at one stage, it was stated that certain records were with the Chief Judge, City Civil Courts, Secunderabad. Therefore, on 11-3-2004, he was ordered to put up the records. But the records were not ultimately found. Some records have now been produced by the learned Counsel for the respondents.

Second respondent also filed an additional affidavit in which he submitted that he had inspected the spot along with Deputy Director, Survey and Land Records, Hyderabad. During his inspection, he found that S.No.171 of Thokatta village had been divided into S.Nos.171/1, 171/2 and 171/3 admeasuring Ac.3-00, which was under encroachment of slum and two individuals, and in an area of Ac.0.04 guntas, one Hanuman temple was existing. No part of S.No.171 of Thokatta village was under the occupation of Airport Authorities and this survey number was located outside the Airport compound wall.

In reply to this affidavit, a counter-affidavit has been filed by the petitioners. They submit that the assertions made in the affidavit by the Land Acquisition Officer are contrary to the records including the proceedings of the Board of Revenue under B.P.No.3374/76 dated 24-9-1976, and several letters & correspondence of the Government. They have also referred to a letter dated 12-6-1968 by the Assistant Engineer, Begumpet Aviation, Sub Division I, Central P.W.D., Begumpet Airport Authority, who according to the petitioners confirmed the acquisition and possession of the petitioners' land. They contend that the *ex parte* survey conducted by the Land Acquisition Officer should have no bearing on the case.

In the light of these pleadings, two questions need to be answered by this Court :

> 1. Whether the writ could be issued in view of the long delay in approaching this Court ?
>
> 2. If so, whether this Court would be in a position to decide the questions of fact pertaining to ownership of the land by the petitioners and its acquisition by the respondents ?

It is true that these petitioners have come to this Court after lapse of 43 years but learned Counsel for the petitioners submits that on this ground alone, the writ petition cannot be thrown out and he has relied on ***Hindustan Sugar Mills v. State of Rajasthan,*** wherein the Supreme Court made the following observations:

> "It is the duty of the State to do what is fair and just to the citizen, and the State should not seek to defeat the legitimate

> claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand"

He has also relied on ***Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur***, wherein the Supreme Court held as follows:

> "The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches."

Learned Counsel for the petitioners further relied on ***R.S.Deodhar v. State of Maharashtra*** wherein the Supreme Court relied on another judgment of Supreme Court reported in ***Tilokchand Motichand, M/s v. H.B.Munshi, Commissioner of Sales Tax, Bombay*** and quoted a passage from that judgment as under:

> "The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

On the other hand, learned Counsel for the respondents has relied on ***State of Maharashtra v. Digambar,*** which laid down as follows:

> "How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue

delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

Whether the doctrine of laches could disentitle the grant of relief to Courts in relation to the limitations specified by the High Court while exercising jurisdiction under

Article 226 of the Constitution of India came up before the Constitution bench of the Court in ***The Moon Mills v. Industrial Court, Bombay.*** The Constitution Bench while considering the questions relating to the delay in approaching the Court held,

> "It is true that the issue of a writ of certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by **Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp, (1874) 5 PC 221 at p. 239**, as follows:-
>
> "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

There are no reasons given at all in the writ petition as to why petitioners slept over the matter for a period of 43 years. Even if it is considered that they made an application in 1956 to the respondents, even then, the question remains unanswered as to what happened after 1956. Even if it is also accepted that the Board of Revenue had asked the Collector to take steps in the matter, even then, the question remains unanswered as to what steps the petitioners took to get the

compensation if their lands were acquired Therefore, in my opinion, the case was hit by laches.

The case needs to be dismissed on the ground of there being disputed questions of fact. Although it is a fact that the Board of Revenue passed proceedings on 24-9-1976 in which it stated,

> *"The Board after careful examination of all the aspects of the case and after discussions with the District Revenue Officer, Hyderabad, Special Deputy Collector, Land Acquisition (Genl.), Hyderabad and after examining the various records produced before it, considered that if challenged in a Civil Court it will be difficult to dispute successfully the acquisition of S.No.171 (new corresponding to old S.Nos.37/2 & 3) its taking possession in 1958 or the ownership of Sri Rustomji Chenoy" ,*

yet it cannot be taken conclusive proof of title of the petitioners as well as taking over of the land by Begumpet Airport authorities. The Airport authorities have denied having taken the land. The survey conducted by the second respondent-Special Deputy Collector, Hyderabad, in 2004 shows that the land is in occupation of certain other encroachers and not in the occupation of the Airport authorities, but the encroachers were not made parties to this writ petition. Without their eviction, respondents cannot be forced to pay compensation, and eviction cannot be ordered without the encroachers being parties to this writ petition. That apart, the letter dated 27-3-1986 by the Special Deputy Collector to the Collector, Hyderabad, would not be a conclusive proof of acquisition as well as possession of the land by the Airport authorities. There is another aspect of the matter that the respondents have claimed, i.e., the land for which compensation is being sought by the petitioners belongs to the Government and therefore, there was no question of granting compensation to anybody. It was also contended that the land that was sought to be acquired under S.No.37 was not the land, which was being claimed by the petitioners. These are all questions of fact, which could not be settled by this Court in these proceedings.

For these reasons, we do not find merit in the writ petition, which is accordingly dismissed. No costs.

(Bilal Nazki, J)

20th January, 2005

NB:

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